

Introduced by Senator Pavley

February 16, 2011

An act to add and repeal Article 6 (commencing with Section 12485) of Chapter 5 of Part 2 of Division 3 of Title 2 of the Government Code, relating to state government.

LEGISLATIVE COUNSEL'S DIGEST

SB 449, as introduced, Pavley. Controller: local agency financial review.

Existing law requires certain local agencies to furnish reports to the Controller concerning financial transactions of the local agency, subject to uniform accounting and reporting procedures prescribed by the Controller. The Controller may provide for the investigation of certain local agency finances if a report is not made in the time, form, and manner required or there is reason to believe that a report is false, incomplete, or incorrect.

This bill would additionally authorize the Controller to conduct a preliminary review to determine the existence of a local agency financial problem, and perform an audit upon completion of that review, subject to specified criteria.

The bill would require the Controller to convene a local agency financial review committee with a specified membership, and authorize the committee to recommend a financial recovery plan for a local agency requesting assistance. It would require the committee to report to the Legislature annually on the actions of the committee and the status of all engagements with local agencies pursuant to these provisions.

The bill would specify that its provisions would be repealed on January 1, 2015.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. (a) The Legislature finds all of the following:

2 (1) The economic recession has disproportionately affected
3 California and, in particular, the local agencies that deliver vital
4 services to the public. Many local agencies have been forced to
5 take unprecedented steps to avert financial crisis and maintain a
6 sound credit rating. Revenue pressures precipitated by the recession
7 have exposed financial mismanagement at many local agencies.

8 (2) The State of California has a vital financial interest in the
9 solvency of its local agencies. When insolvency occurs or is even
10 intimated by a local agency, the state's credit rating is often
11 negatively impacted, costing the state millions of dollars, making
12 borrowing more difficult, and hindering the state's economic
13 recovery.

14 (3) The health and welfare of the citizens of the state would be
15 adversely affected by the insolvency of local agencies. Therefore,
16 the survival of local agencies is vitally necessary to the interests
17 of this state in providing necessary governmental services.

18 (b) Accordingly, the Legislature declares that it is a valid public
19 purpose for the state to assist a local agency in a fiscal emergency
20 situation by requiring prudent fiscal management, and that the
21 authority and powers conferred by this act constitute a necessary
22 program and serve a valid public purpose.

23 SEC. 2. Article 6 (commencing with Section 12485) is added
24 to Chapter 5 of Part 2 of Division 3 of Title 2 of the Government
25 Code, to read:

26

27 Article 6. Local Agency Financial Review and Assistance

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29 12485. (a) The Controller may conduct a preliminary review
30 to determine the existence of a local agency financial problem if
31 one or more of the following occur:

32 (1) (A) The governing body or the chief administrative officer
33 of a local agency requests a preliminary review under this section.
34 The request shall be in writing and shall identify the existing fiscal
35 conditions that make the request necessary.

1 (B) Any costs incurred pursuant to this paragraph shall be borne
2 by the local agency requesting the review and shall be a charge
3 against any unencumbered funds of the local agency.

4 (2) The Controller receives a written request from a creditor
5 with an undisputed claim that remains unpaid six months after its
6 due date against the local agency that exceeds the greater of ten
7 thousand dollars (\$10,000) or 1 percent of the annual general fund
8 budget of the local agency, provided that no less than 30 days prior
9 to submitting the request, the creditor notifies the local agency in
10 writing of his or her intention to submit the request.

11 (3) The Controller receives notification from the trustee, actuary,
12 or at least 10 percent of the beneficiaries of a local agency pension
13 fund alleging that the local agency has not timely deposited its
14 minimum obligation payment to the pension fund as required by
15 law.

16 (4) The Controller receives notification that employees of the
17 local agency have not been paid and it has been at least seven days
18 after the scheduled date of payment.

19 (5) The Controller receives notification from a trustee, paying
20 agent, or bondholder of a default in a bond payment, or a violation
21 of one or more bond covenants, by a local agency.

22 (6) The Controller receives notification that the local agency is
23 delinquent in the distribution of tax revenues as required by law.

24 (7) The local agency fails to provide an annual financial report
25 or audit that conforms with the minimum procedures and standards
26 of the Controller as required by law.

27 (8) The Controller is requested by either house of the Legislature
28 to conduct a preliminary review under this section.

29 (b) In conducting a preliminary review pursuant to this section,
30 the Controller shall provide the local agency written notification
31 of the review, and shall meet with the local agency officials to
32 receive, discuss, and consider information provided by the local
33 agency concerning the agency's financial condition.

34 (c) The Controller shall report to the Governor and the
35 Legislature within 120 days after beginning a preliminary review
36 pursuant to this section, on whether the review has determined that
37 one or more conditions indicative of a serious financial problem
38 may exist within the local agency.

39 12486. (a) Upon completion of a preliminary review conducted
40 pursuant to Section 12485, the Controller may conduct an audit

1 of the local agency that was the subject of the preliminary review.
2 The local agency shall make its books and records available to the
3 Controller for this purpose.

4 (b) The audit shall be conducted for purposes of determining if
5 one or more of the following conditions indicative of a serious
6 financial problem have occurred, or are likely to occur, if remedial
7 action is not taken:

8 (1) A default in the payment of principal or interest upon bonded
9 indebtedness for which no funds, or insufficient funds, are on hand
10 and segregated in a special trust fund.

11 (2) Failure for a period of 30 days or more beyond the due date
12 to transfer one or more of the following to the appropriate agency:

13 (A) Taxes withheld on the income of employees.

14 (B) Taxes collected by the local agency as agent for another
15 governmental entity or taxing authority.

16 (C) Any contribution required by a pension, retirement, or
17 benefit plan.

18 (3) Failure for a period of 30 days or more to pay wages and
19 salaries or other compensation or benefits owed to local agency
20 employees or retirees.

21 (4) The total amount of accounts payable for the current fiscal
22 year, as determined by the local agency treasurer's uniform chart
23 of accounts, is in excess of 10 percent of the total expenditures of
24 the local agency in that fiscal year.

25 (5) Failure to eliminate an existing deficit in any fund of the
26 local agency within the two-year period preceding the end of the
27 local agency's fiscal year for which a preliminary review was
28 conducted pursuant to Section 12485.

29 (6) Projection of a deficit in the general fund of the local agency
30 for the current fiscal year in excess of 10 percent of the budgeted
31 revenues for the general fund.

32 12487. (a) The Controller shall convene a local agency
33 financial review committee to provide assistance to local agencies
34 who seek help in averting or managing a financial problem. The
35 committee shall meet no less than quarterly.

36 (b) The committee shall be chaired by the Controller and include
37 representatives of the office of the Treasurer and the Department
38 of Finance.

39 (c) The Controller shall utilize the services of a consultant
40 having extensive financial management and accounting experience

1 with local agencies, to assist in evaluating and assisting local
2 agencies who are undergoing or facing a financial problem.

3 (d) A local agency may request assistance from the committee
4 in meeting the ordinary needs of government operations. The
5 request shall identify the existing financial conditions that make
6 the request necessary.

7 (e) In consultation with the local agency requesting assistance,
8 and using any applicable data from a preliminary review or audit
9 conducted pursuant to this article, the committee shall recommend
10 a financial recovery plan for the local agency. The financial
11 recovery plan shall consider both of the following:

12 (1) Conducting the operations of the local agency within the
13 resources available according to the data provided by the local
14 agency.

15 (2) The payment in full of the scheduled debt service
16 requirements on all bonded and other indebtedness and other
17 uncontested legal obligations of the local agency.

18 (f) The Controller shall report to the Legislature, no later than
19 June 30, 2012, and annually thereafter, on the actions of the
20 committee and status of all engagements with local agencies
21 pursuant to this section.

22 12488. For purposes of this article, “local agency” means a
23 city, county, city and county, special district, or redevelopment
24 agency.

25 12489. This article shall remain in effect only until January 1,
26 2015, and as of that date is repealed, unless a later enacted statute,
27 that is enacted before January 1, 2015, deletes or extends that date.